GENERAL TERMS AND CONDITIONS RELATING TO THE OPERATION OF IT SERVICES

1. SUBJECT MATTER AND VALIDITY

1.1 The collaboration between SWISS TXT AG based in Biel/Bienne (hereinafter referred to as «STXT») and the Client relating to the operation of one or more IT services (hereinafter referred to as the «IT services») is governed exclusively by the present General Terms and Conditions (hereinafter referred to as «GTCs») and the Service Level Agreement reached between the parties (hereinafter referred to as the «SLA»).

1.2 These GTCs are valid for all services in connection with the operation of IT services delivered by STXT. They supersede any previous agreements on these services. In the absence of any written agreement to the contrary, they apply to all contracts between STXT and the Client relating to the operation of IT services.

1.3 Any project work required by the Client prior to the operation of IT services will be governed by a separate contract.

1.4 These GTCs and the SLA jointly constitute the contractual relationship existing between STXT and the Client (jointly referred to as the «Parties»). The SLA may consist of several documents, such as quality and performance criteria and a Client-specific price sheet, which are also part of the contractual relationship.

1.5 Additions and amendments to the contractual relationship are possible only if they have been agreed in writing between the Parties. The Client's general terms and conditions or similar provisions are hereby expressly excluded.

1.6 In the event of any contradictions between these GTCs and the SLA, the provisions of the GTCs will take precedence over the SLA in the absence of an express stipulation to the contrary in the SLA.

1.7 In the absence of any agreement to the contrary in the SLA, the Client's access to the Internet and the IT services is not a subject of the contractual relationship. In the absence of any agreement to the contrary in the SLA, the Client bears sole responsibility for the functional efficiency of its Internet access including transmission links to STXT.

1.8 In the absence of any express written statement to the contrary by STXT, all information provided by STXT outside the contractual relationship, particularly in brochures and other publications, is non-binding, without obligation and to be regarded as an invitation to provide an offer.

2. OBLIGATIONS OF STXT

2.1   STXT will provide the Client with IT services throughout the duration of the contractual relationship and in accordance with the contractual provisions.

2.2   The nature and functional extent of the IT services are described in the SLA.

2.3   The IT services, the processing power required for their use and memory space for the Client's data will be provided by a third party instructed by STXT if this is agreed in the SLA. This is subject to any provisions to the contrary in the SLA.

2.4   The permitted use of the IT services arises from the contractual relationship and in particular from the SLA. In the absence of any explicit provision to the contrary in the SLA, the software is used on a non-exclusive basis.

2.5   The right of use accorded to the Client is personal and may not be transferred to or used by third parties unless otherwise agreed between the parties in the SLA. Accordingly the authorization to use the IT services under the contractual relationship applies only to the Client's governing bodies and employees and to third parties acting on its instructions, insofar as these are authorized under the contractual relationship to use the IT services, but not to the governing bodies and employees of any of the client's subsidiary, associate or parent companies or to third parties acting on their instructions. Such use by all companies in holding structures must be the subject of a written supplementary agreement between the Parties.

2.6   The Client is entitled to support services if this is agreed in the SLA. The scope of such services is set out in the SLA. The charges made for support services are set out in section 5 below.

2.7   Insofar as the Client is entitled to support services, these are provided by suitable means at the discretion of STXT, especially through the ticketing system.

2.8   STXT will make every effort to make the IT services available to the Client at the times set out in the SLA, but it is unable to guarantee that it will comply with the SLA without interruption. Whenever possible the Client will be notified in advance of interruptions during service periods, especially for maintenance reasons. Any response times are set out in the SLA.

2.9   STXT is not obliged to perform the services it owes under the contractual agreement itself. It may instruct third parties to do so without the Client's consent.

2.10   The foregoing obligations are not to be understood as exhaustive. Further obligations may arise from other elements of the contractual relationship, especially the SLA.

3. OBLIGATIONS OF THE CLIENT

3.1   The Client will ensure and guarantees that it, its governing bodies and employees and third parties acting on its instructions using STXT software will do so only in accordance with the provisions of the contractual relationship.

3.2   The Client is prohibited from copying, decompiling or otherwise editing, hiring or lending the IT services of STXT. It will prevent unauthorized access to the IT services of STXT and will also impose these obligations on its governing bodies and employees, and on third parties acting on its instructions.

3.3   The Client undertakes to provide its employees who use the IT services with comprehensive training in their use or to have them trained by STXT against payment.

3.4   The Client undertakes to provide STXT on request with information and documents required by STXT in order to deliver its services, and it will also give STXT any assistance it needs in order to deliver its services under the contractual relationship.

3.5   In the absence of any explicit written agreement to the contrary, all licences required in connection with the services to be delivered to the Client by STXT, especially Microsoft licences, must be acquired through STXT.

3.6   The Client is responsible for regularly backing up its data if it operates the IT services itself (e.g. under IaaS) and the SLA contains no explicit provision to the contrary.

3.7   The foregoing obligations are not to be understood as exhaustive. Further obligations may arise from other elements of the contractual relationship, especially the SLA.

4. CHANGES TO THE SCOPE OF SERVICES

4.1   Each party may request service changes in writing at any time.

4.2   If the Client wishes a change in the service, it notifies STXT accordingly via the STXT ticketing system that exists for the purpose. STXT responds to the Client within two working days of receiving this notification as a rule, but within ten working days at the latest, stating whether the change is possible and what effects it will have on the services to be provided, as well as the costs and schedule. The Client tells STXT within ten further working days from the receipt of this response via the ticketing system whether the change is to be implemented. Communications from the Client in accordance with this section 4.2 that are not sent via the ticketing system are non-binding and do not oblige STXT to deliver services of any sort.

4.3   If STXT wishes a change to take place, the Client may accept or reject it within ten working days of receiving the communication.

4.4   Service changes must be agreed in writing before they are implemented.

4.5 In the absence of any written agreement to the contrary between the contractual parties, STXT will continue to work as contractually agreed while the change requests are considered.

5. CHARGES

5.1 The Client is required to pay STXT the fees owed by it under the contractual relationship. If the Client obtains support services from STXT, supplementary charges will apply. The amounts of the charges and their payment dates are set out in the SLA.

5.2 All prices in the SLA are exclusive of value added tax.

5.3 All services not explicitly listed in the contractual relationship that are delivered by STXT in response to a request for them by the Client will be subject to supplementary charges (hereinafter referred to as «supplementary charges»). The supplementary charges will be invoiced to the Client at the valid STXT hourly rates and will be payable immediately on the completion of the corresponding activities by STXT. The Client will be invoiced for products at STXT list prices.

5.4 Charges and supplementary charges are payable by the Client within 30 days of the invoice date. Default interest of 5% p.a. will apply after this date. No reminder is required.

5.5 STXT is entitled to increases charges, supplementary charges and hourly rates at any time at its discretion.

5.6 STXT is not obliged to provide the Client with the services set out in the contractual agreement unless it has been paid in full for all the charges invoiced by it.

6. IP RIGHTS

6.1 All rights to the work resulting from the fulfilment of the contractual agreement (hereinafter referred to as «IP rights»), remain the property of STXT. The contractual relationship does not lead to the transfer of IP rights to the Client unless the SLA contains an express provision to the contrary.

6.2 STXT will grant a non-exclusive, irrevocable, irredeemable global licence to the Client permitting it to use the work results created by STXT within the scope of the products and services of STXT, provided that all charges, costs and expenses invoiced by STXT have been paid to STXT in full.

7. WARRANTY AND LIABILITY

7.1   STXT will provide the services as contractually agreed with suitably qualified staff and the required level of care. In the absence of any express provision to the contrary in the SLA, all other guarantees by STXT are hereby expressly excluded.

7.2   The Parties are liable to each other only for damage caused with intent or gross negligence in connection with the contractual agreement. They are not liable for auxiliaries or third parties or for their products and services. All further liability for damages relating directly or indirectly to the contractual agreement is excluded to the extent permitted by law. This disclaimer applies regardless of the legal grounds of the claims.

8. DURATION AND TERMINATION

8.1   The contractual relationship comes into force when the SLA is signed by both the Parties, and remains valid until notice of termination is given by one of the Parties in accordance with the provisions of the contractual relationship.

8.2   In the absence of a provision to the contrary in the SLA, either party can give at least three calendar months' notice of termination of the contractual relationship expiring at the end of a contract year.

8.3   Either party can terminate the contractual agreement with immediate effect for a compelling reason for which it is not responsible. Immediate termination of the contractual agreement for a compelling reason is possible in the event of one of the following situations in particular:

■   the futile seizure, insolvency, debt restructuring moratorium or bankruptcy of the other party

■   if the other party is in default with the fulfilment of a contractual obligation and fails to fulfil it within a grace period of 30 days the receipt of a written reminder.

8.4   Notice given in accordance with this section 8 must be in writing. An e-mail is not sufficient.

8.5   In the event of the dissolution of the contractual relationship the Client must compensate STXT for all fees, charges and expenses that have accrued until the point of dissolution of the contractual relationship. The customer must settle the corresponding invoice from STXT within 30 days of the invoice date.

9. CONFIDENTIALITY AND DATA PROTECTION

9.1 The parties undertake to instruct their employees and any appointed third parties to treat any documents marked as confidential relating to their business operations that are made available to them in the course of contract fulfilment or come to their attention with the same care and discretion as their own confidential information. This duty of confidentiality applies for the duration of the contractual agreement and also after its termination.

9.2 The duty of confidentiality does not apply to information that is publicly available, verifiably already known to the contract parties, was independently developed by them or purchased from authorized third parties.

9.3 The SLA sets out which of the Client's personal data may be processed for what purposes by STXT or by third parties acting on its instructions. Third parties acting on the instructions of STXT are listed in the SLA. In the absence of any explicit provision to the contrary in the SLA they process the Client's personal data exclusively in Switzerland or the EU.

9.4 The Client guarantees that STXT may process the personal data provided to it as and to the extent set out in the SLA. The terms «process» and «personal data» used in this section 9 have the meanings set out in valid Swiss data protection legislation.

9.5 Each party undertakes to observe the applicable provisions of Swiss data protection legislation.

10. NON-SOLICITATION AGREEMENT

10.1 The Client undertakes not to take any action that could amount to the solicitation of customers, employees or auxiliaries of STXT.

10.2 In the event of a breach of this non-solicitation agreement the Client must pay STXT a contractual penalty of CHF 100,000 per incident.

10.3 Payment of the contractual penalty does not release the party from its obligation to observe the non-solicitation agreement. Claims for compensation in excess of the contractual penalty amount remain reserved.

10.4 The non-solicitation agreement applies for the duration of the contractual agreement and for two years after its termination.

11. FINAL PROVISIONS

11.1   STXT is authorized to use the Client's name and logo and the resulting work or parts of it on the STXT website, in advertising materials and elsewhere, in particular for reference purposes.

11.2   The Client is permitted to withhold payments or to offset them with counter-claims only insofar as its counter-claims are uncontested or upheld by a court of law.

11.3   In the absence of any provision to the contrary in the contractual relationship, faxes and e-mails are deemed to comply with the written form in terms of the contractual agreement.

11.4   Should one or more of the provisions of the contractual agreement be or become void or invalid, the remaining provisions of the contractual agreement shall be unaffected thereby. Should a provision be void or invalid, it must be replaced by a valid one that is as close as possible to the commercial intention of the ineffective one.

11.5   The contractual agreement is subject to substantive Swiss law and excludes the conflict of law rules and international agreements.

11.6   The Parties will endeavour to resolve any conflicts, disagreements or claims arising from or in connection with the contractual agreement out of court. Should the Parties be unable to reach agreement out of court, the ordinary courts of law situated at the domicile of STXT are the exclusive place of jurisdiction.

Biel-Bienne, january 2018